

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

MARK AVERY BRIM, D.P.M.

**Doctor of Podiatric Medicine
Certificate No. E-1542**

Respondent.

Case No: 1B-2005-165008

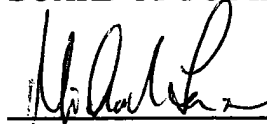
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on May 14, 2009.

DATED April 14, 2009

BOARD OF PODIATRIC MEDICINE



Michael Levi, D.P.M., President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KLINT JAMES MCKAY, State Bar No. 120881
Deputy Attorney General
3 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
4 Telephone: (213) 576-1327
Facsimile: (213) 897-9395
5 E-mail: Klint.McKay@doj.ca.gov

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF PODIATRIC MEDICINE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 MARK AVERY BRIM
5353 Balboa Blvd., Suite 110
13 Encino, CA 91316,

14 Podiatrist License Certificate E1542,

15 Respondent.

Case No. 1B-2005-165008

OAH No. 2008 030913

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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17 In the interest of a prompt and speedy settlement of this matter, consistent with the
18 public interest and the responsibility of the Board of Podiatric Medicine of the Department of
19 Consumer Affairs (the "Board"), the parties hereby agree to the following Stipulated Settlement
20 and Disciplinary Order which will be submitted to the Board for approval and adoption as the
21 final disposition of the Accusation.

22 PARTIES

23 A. James Rathlesberger (Complainant) is the Executive Officer of the Board.
24 He brought this action solely in his official capacity and is represented in this matter by Edmund
25 G. Brown Jr., Attorney General of the State of California, by Klint James McKay, Deputy
26 Attorney General.

27 B. Respondent Mark Avery Brim, D.P.M. (Respondent) is represented in this
28 proceeding by attorney James R. Parrett, whose address is 18201 Von Karman Avenue, Suite

1 1020, Irvine, CA 92612-1000.

2 C. On or about September 6, 1972, the Board issued Podiatrist License
3 Certificate E1542 to Mark Avery Brim, D.P.M. ("Respondent"). This Podiatrist License
4 Certificate was in full force and effect at all times relevant to the charges brought in the
5 Accusation referenced below and will expire on September 30, 2009, unless renewed.

6 JURISDICTION

7 D. Accusation No. 1B-2005-165008 was filed before the Board, and is
8 currently pending against Respondent. The Accusation and all other statutorily required
9 documents were properly served on Respondent on January 8, 2008. Respondent timely filed his
10 Notice of Defense contesting the Accusation. A copy of Accusation No. 1B-2005-165008 is
11 attached as exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 E. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 1B-2005-165008. Respondent has
15 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
16 Settlement and Disciplinary Order.

17 F. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 G. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 CULPABILITY

27 H. Respondent admits the truth of each and every charge and allegation in the
28 Third Cause for Discipline. Respondent disputes the factual allegations in the remaining Causes

1 for Discipline but for the purposes of this Stipulation agrees not to contest them.

2 I. Respondent agrees that his Podiatrist License Certificate is subject to
3 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
4 Disciplinary Order below.

5 CIRCUMSTANCES IN MITIGATION

6 J. Respondent has never been the subject of any disciplinary action. He is
7 admitting responsibility at an early stage in the proceedings.

8 CONTINGENCY

9 K. This Stipulation is subject to approval by the Board. Respondent
10 understands and agrees that counsel for Complainant and the staff of the Board may
11 communicate directly with the Board regarding this stipulation and settlement, without notice to
12 or participation by Respondent or his counsel. By signing the stipulation, Respondent
13 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
14 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
15 as its Decision and Order, this Stipulated Settlement and Disciplinary Order shall be of no force
16 or effect and, except for this paragraph, it shall be inadmissible in any legal action between the
17 parties, and the Board shall not be disqualified from further action by having considered this
18 matter.

19 L. The parties understand and agree that facsimile copies of this Stipulated
20 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
21 force and effect as the originals.

22 M. In consideration of the foregoing admissions and stipulations, the parties
23 agree that the Board may, without further notice or formal proceeding, issue and enter the
24 following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED:

1. EDUCATION COURSE Within 60 calendar days of the effective date of the Board's Order adopting this Stipulation (the "Effective Date"), and on an annual basis thereafter for three calendar years, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. These courses, however, need not be in the same area as either course set forth in the next paragraph. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall annually provide proof of attendance for at least 65 hours of continuing medical education of which 40 hours satisfied this condition and 25 met normal continuing education requirements.

2. MEDICAL EDUCATIONAL COURSES Within 60 calendar days of the Effective Date, Respondent shall enroll in a course in medical record keeping, at Respondent's expense, approved in advance by the Board. In addition, Respondent shall enroll in at least one other course substantially similar to those offered by the PACE (Physician Assessment and Clinical Education) program. Respondent shall successfully complete the courses on or before one year from the Effective Date. The PACE Medical Record Keeping Course is acceptable to satisfy the medical recording keeping course requirement.

3. COST RECOVERY On or before three years after the Effective Date, Respondent shall pay the Board Fifteen Thousand Dollars (\$15,000) as partial compensation for the Board's expenses in investigating and prosecuting this action. Respondent may make payments in any manner, so long as the full amount is paid timely.

1 4. FAILURE TO COMPLY A material breach by Respondent of any term
2 herein shall constitute unprofessional conduct and shall be a basis for further disciplinary action
3 by the Board. In such circumstances, the Complainant may reinstate the Accusation in this
4 matter and/or file a supplemental accusation alleging any material breach of this order by
5 Respondent as unprofessional conduct.

6 5) Upon the timely completion of the terms and conditions set forth herein, a
7 public reprimand in the following form shall become effective with respect to Respondent:

8
9 **This Public Reprimand is hereby issued in connection with your care and**
10 **treatment of patient K.S, as set forth in Accusation No. 1B-2005-165008, as**
11 **follows:**

12 **Between on March 25, 2002 and April 8, 2002, you failed to maintain accurate**
13 **and complete records as required by law and the standards of medical and**
14 **podiatric practice in your community. This failure involved the failure to timely**
15 **and accurately record the prescription of two scheduled drugs which are**
16 **controlled under state and federal law, and for which accurate and complete**
17 **records were critical for the consistent and professional care and treatment of**
18 **patient K.S.**

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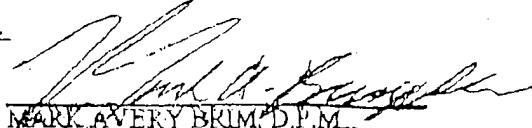
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1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
2 fully discussed it with my attorney, James R. Parrett. I understand the stipulation and the effect it will
3 have on my Physician & Surgeon. I enter into this Stipulated Settlement and Disciplinary Order
4 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board
5 of Podiatric Medicine.

6 DATED: 2/11/09, 4:00pm

7 
8 MARK AVERY BRIM, D.P.M.,
Respondent

9 I have read and fully discussed with Respondent Mark Avery Brim, D.P.M. the terms
10 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
11 I approve its form and content.

12 DATED: 2/11/09 4:07

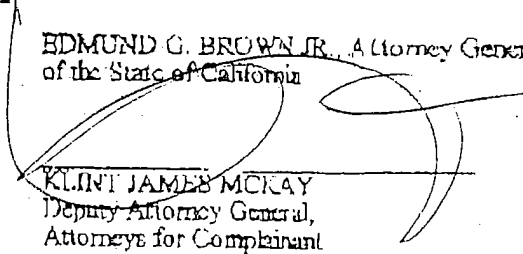
13 
14 JAMES R. PARRETT
15 Attorney for Respondent

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17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Podiatric Medicine of the Department of Consumer
20 Affairs.

21 DATED: 11 Feb 2009

22 EDMUND G. BROWN JR., Attorney General
23 of the State of California

24 
25 CLINT JAMES MCKAY
26 Deputy Attorney General,
Attorney for Complainant

27 D:\OFM\mcr ID: LA2006501860
28 Stipulation Version 3.0.wpd

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Exhibit A
Accusation No. 1B-2005-165008

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of the State of California
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Deputy Attorney General,
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E-mail: Klint.McKay@doj.ca.gov

Attorneys for Complainant

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS**

In the Matter of the Accusation Against:

Board No. 1B-2005-165008

MARK AVERY BRIM, D.P.M.
5353 Balboa Boulevard, Suite Number 110
Encino, California 91316,

OAH No.

Podiatrist License Certificate Number E1542,

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Jim Rathlesberger (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine (Board).

2. On or about September 6, 1972, the Board issued Podiatrist License Certificate Number E1542 to Mark Avery Brim, D.P.M. (Respondent). The Podiatrist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009.

JURISDICTION

3. This Accusation is brought before the California Board of Podiatric Medicine, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 (3) Be placed on probation and be required to pay the costs of probation
2 monitoring upon order of the division.

3 (4) Be publicly reprimanded by the division.

4 (5) Have any other action taken in relation to discipline as part of an
5 order of probation, as the division or an administrative law judge may deem
6 proper.

7 (b) Any matter heard pursuant to subdivision (a), except for warning
8 letters, medical review or advisory conferences, professional competency
9 examinations, continuing education activities, and cost reimbursement associated
10 therewith that are agreed to with the division and successfully completed by the
11 licensee, or other matters made confidential or privileged by existing law, is
12 deemed public, and shall be made available to the public by the board pursuant to
13 Section 803.1.”

14 6. Section 2228 of the Code states:

15 “The authority of the board or a division of the board or the California
16 Board of Podiatric Medicine to discipline a licensee by placing him or her on
17 probation includes, but is not limited to, the following:

18 (a) Requiring the licensee to obtain additional professional training and
19 to pass an examination upon the completion of the training. The examination may
20 be written or oral, or both, and may be a practical or clinical examination, or both,
21 at the option of the board or division or the administrative law judge.

22 (b) Requiring the licensee to submit to a complete diagnostic
23 examination by one or more physicians and surgeons appointed by the division. If
24 an examination is ordered, the board or division shall receive and consider any
25 other report of a complete diagnostic examination given by one or more physicians
26 and surgeons of the licensee's choice.”

27 (c) Restricting or limiting the extent, scope, or type of practice of the
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1 licensee, including requiring notice to applicable patients that the licensee is unable
2 to perform the indicated treatment, where appropriate.

3 (d) Providing the option of alternative community service in cases other
4 than violations relating to quality of care, as defined by the Division of Medical
5 Quality.”

6 7. Section 2234 of the Code states:

7 The Division of Medical Quality shall take action against any licensee who
8 is charged with unprofessional conduct. In addition to other provisions of this
9 article, unprofessional conduct includes, but is not limited to, the following:

10 (a) Violating or attempting to violate, directly or indirectly, assisting in
11 or abetting the violation of, or conspiring to violate any provision of this chapter
12 [Chapter 5, the Medical Practice Act].

13 (b) Gross negligence.

14 (c) Repeated negligent acts. To be repeated, there must be two or more
15 negligent acts or omissions. An initial negligent act or omission followed by a
16 separate and distinct departure from the applicable standard of care shall constitute
17 repeated negligent acts.

18 (1) An initial negligent diagnosis followed by an act or omission
19 medically appropriate for that negligent diagnosis of the patient shall constitute a
20 single negligent act.

21 (2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including,
23 but not limited to, a reevaluation of the diagnosis or a change in treatment, and the
24 licensee's conduct departs from the applicable standard of care, each departure
25 constitutes a separate and distinct breach of the standard of care.

26 (d) Incompetence.

27 (e) The commission of any act involving dishonesty or corruption
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1 which is substantially related to the qualifications, functions, or duties of a physician and
2 surgeon.

3 (f) Any action or conduct which would have warranted the
4 denial of a certificate."

5 8. Section 2266 of the Code states:

6 "The failure of a physician and surgeon to maintain adequate and accurate
7 records relating to the provision of services to their patients constitutes unprofessional
8 conduct"

9 9. Section 2497 of the Code states:

10 (a) "The board may order the denial of an application for, or the
11 suspension of, or the revocation of, or the imposition of probationary conditions
12 upon, a certificate to practice podiatric medicine for any of the causes set forth in
13 Article 12 (commencing with Section 2220) in accordance with Section 2222.

14 (b) The board may hear all matters, including but not limited to, any
15 contested case or may assign any such matters to an administrative law judge. The
16 proceedings shall be held in accordance with Section 2230. If a contested case is
17 heard by the board itself, the administrative law judge who presided at the hearing
18 shall be present during the board's consideration of the case and shall assist and
19 advise the board."

20 10. Section 2497.5 of the Code states:

21 (a) "The board may request the administrative law judge, under his or
22 her proposed decision in resolution of a disciplinary proceeding before the board,
23 to direct any licensee found guilty of unprofessional conduct to pay to the board a
24 sum not to exceed the actual and reasonable costs of the investigation and
25 prosecution of the case.

26 (b) The costs to be assessed shall be fixed by the administrative law
27 judge and shall not in any event be increased by the board. When the board does
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1 not adopt a proposed decision and remands the case to an administrative law judge,
2 the administrative law judge shall not increase the amount of any costs assessed in
3 the proposed decision.

4 (c) When the payment directed in the board's order for payment of costs
5 is not made by the licensee, the board may enforce the order for payment by
6 bringing an action in any appropriate court. This right of enforcement shall be in
7 addition to any other rights the board may have as to any licensee directed to pay
8 costs.

9 (d) In any judicial action for the recovery of costs, proof of the board's
10 decision shall be conclusive proof of the validity of the order of payment and the
11 terms for payment.

12 (e)(1) Except as provided in paragraph (2), the board shall not renew or
13 reinstate the license of any licensee who has failed to pay all of the costs ordered
14 under this section.

15 (e)(2) Notwithstanding paragraph (1), the board may, in its discretion,
16 conditionally renew or reinstate for a maximum of one year the license of any
17 licensee who demonstrates financial hardship and who enters into a formal
18 agreement with the board to reimburse the board within one year period for those
19 unpaid costs.

20 (f) All costs recovered under this section shall be deposited in the
21 Podiatry Fund as a reimbursement in either the fiscal year in which the costs are
22 actually recovered or the previous fiscal year, as the board may direct."

23 FIRST CAUSE FOR DISCIPLINE

24 (Gross Negligence: Failure to Adequately Evaluate & Record a Physical Examination)

25 Respondent is subject to disciplinary action under Section 2234, subdivision (b) of
26 the Code for gross negligence in his care of Patient K.S. The facts and circumstances are
27 as follows:
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1 12. On or about March 21, 2002, Patient K.S., who is diabetic and confined to
2 a wheelchair, fell while attempting to move to his automobile. On March 25, 2002,
3 Patient, K.S. saw Respondent on an emergency basis to determine what injuries he had
4 suffered; Respondent had seen Patient K.S. many times starting in 1995. Patient K.S.
5 complained of pain in his left ankle, among other places. Diabetics are more prone to
6 injury and particularly ulcerations due to compromised blood circulation in their
7 extremities. The applicable standard of care required Respondent to conduct and
8 document a full physical examination and evaluate all possible injuries he may have
9 suffered.

10 13. Respondent did not do this. Instead, he examined Patient K.S.'s ankle and
11 then encased it in an Unna boot (a flexible medicated dressing) with a Coban wrap
12 (another flexible dressing).

13 14. Almost immediately, Patient K.S. began to suffer excruciating pain in his
14 injured foot. A series of almost daily conversations then commenced in which Patient
15 K.S.'s wife requested that Respondent do something about her husband's pain. On March
16 28, 2002, Patient K.S. was taken to another physician for pain, but the bandages were not
17 removed from his ankle.

18 15. On March 29, 2002, Patient K.S.'s wife contacted Respondent again about
19 Patient K.S.'s pain, and Respondent prescribed Vicodin ES but did not chart it. On March
20 30, Patient K.S.'s wife contacted Respondent again about her husband's suffering. On
21 April 1, after Patient K.S.'s wife complained again about Patient K.S.'s pain, Respondent
22 prescribed (but again did not chart) Percocet.

23 16. On April 4, 2002, when X-ray technicians requested that the bandage be
24 removed, it became apparent that Patient K.S.'s leg had become infected. Black skin hung
25 from his ankle, which was bloody and filled with pus.

26 17. Patient K.S. was then transported to Respondent's office by ambulance. He
27 then charted the Vicodin prescription for the first time, reviewed the X-rays, and
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1 mentioned "Reflex Sympathetic Dystrophy Syndrome" also known as (RSD). RSD is
2 diagnosed in situations where the pain is greater than can be explained by an injury to the
3 affected part. Respondent took no action as a result of this, however.

4 18. On April 7, Patient K.S. was admitted to Encino Tarzana Regional Medical
5 Center. Deep diabetic ulcerations had eroded Patient K.S.'s ankle. Over the next two
6 months, multiple surgeries were required to resolve the problem, including artery
7 transplantation, the removal of tendons and muscle surrounding the ulceration.

8 19. Respondent's initial examination of Patient K.S. constituted gross
9 negligence and an extreme departure from the standard of care in that the standard
10 required that Respondent evaluate Patient K.S.'s circulatory/vascular status. Other treating
11 physicians' records indicate that Patient K.S. had no pedal pulses on his left foot and that
12 there were calcified blood vessels in his foot which appeared on x-rays. Respondent's
13 failure to take the steps necessary to fully and completely evaluate Patient K.S.'s condition
14 initially were a proximate cause of the disastrous outcome which befell Patient K.S.

15 SECOND CAUSE FOR DISCIPLINE

16 (Gross Negligence: Failure to Adequately Recognize and Treat Ulcerations)

17 Respondent is subject to disciplinary action under section Section 2234,
18 subdivision (b) of the Code for Gross Negligence in the manner and particulars set forth
19 below.

20 20. Paragraphs 1 through 18, inclusive, are hereby incorporated as if set forth
21 herein.

22 21. The Unna Boot and Coban wrap applied by Respondent on March 25,
23 2002, caused ulcerations in Patient K.S.'s foot because they were too tight. In addition,
24 Respondent failed to recognize, diagnose and treat the developing ulcerations on Patient
25 K.S.'s foot.

26 22. Specifically, Respondent delayed in removing the Unna Boot and Coban
27 wrap, despite the repeated complaints of both Patient K.S. and his wife that Patient K.S.
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1 was in excruciating pain.

2 23. In addition, Respondent used Biofreeze, an analgesic which should be used
3 only in situations where a breathable cotton wrap is used. The Unna Boot and Coban wrap
4 are non-breathable and are, therefore, inappropriate for use in Patient K.S.'s situation.
5 Respondent's failures were a proximate cause of the ulcerations, as well as the delay in
6 discovering them. These actions constitute gross negligence and are an extreme departure
7 from the standard of care.

8 THIRD CAUSE FOR DISCIPLINE

9 (Failure to Maintain Adequate and Accurate Records)

10 24. Respondent is subject to disciplinary action under section 2266 of the Code
11 for failure to maintain adequate and accurate records in that he failed to maintain full,
12 accurate and complete records of the treatment of Patient K.S., including but not limited to
13 timely recording the prescriptions for Vicodin and Percocet. In addition, he did not record
14 the details of the examinations of Patient K.S., nor his treatments, in sufficient detail to
15 advise later treating physicians of Patient K.S.'s medical history.

16 FOURTH CAUSE FOR DISCIPLINE

17 (Repeated Negligent Acts)

18 25. By reason of the facts set forth above in the First and Second Causes for
19 Discipline, Respondent is subject to disciplinary action under section 2234, subdivision (c)
20 for repeated negligent acts.

21 PRAYER

22 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board of Podiatric Medicine issue a decision:


24 1. Revoking or suspending Podiatric License Certificate Number
25 E1542, issued to Mark Avery Brim, D.P.M.;

26 2. Ordering Mark Avery Brim, D.P.M., to pay the Board the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business
28 and Professions Code section 2497.5;

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 4, 2008


JIM RATHLESBERGER
Executive Officer
Board of Podiatric Medicine
State of California
Complainant

LA2006503860
Accusation 2a.wpd

McKay/adm-09/27/2007